

§ 1309.6 Is the normal operation or statutory objective of any program or activity an exception to the rules against age discrimination?

A recipient is permitted to take an action, otherwise prohibited by § 1309.5, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) It is impractical to measure the other characteristic(s) directly on an individual basis.

§ 1309.7 Is the use of reasonable factors other than age an exception to the rules against age discrimination?

A recipient is permitted to take an action otherwise prohibited by § 1309.5 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1309.8 Who has the burden of proving that an action is excepted?

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 1309.6 and 1309.7 is on the recipient of financial assistance from TVA.

§ 1309.9 How does TVA provide financial assistance in conformity with the Act?

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with the Act and this part. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or the transferee in the case of a subsequent transfer, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient during the period for which ownership or possession of the property is retained. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreement, and the extent to which an agreement shall be applicable to subcontractors, transferees, successors in interest, and other participants.

(b) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of TVA financial assistance, or in the case where TVA financial assistance was provided in the form of a transfer by TVA of real property or an interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring compliance with this part and the guidelines contained herein for the period during which the real property is used for a purpose for which the TVA financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved with TVA financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a

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breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the nature of (1) the statute under which the real property is obtained, (2) the recipient, and (3) the instrument effecting or recording the transfer of title. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.10 What general responsibilities do recipients and TVA have to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and afford TVA access to its records to the extent required by TVA to determine whether the recipient is in compliance with the Act.

(b) TVA has responsibility to attempt to secure a recipient's compliance with the Act by voluntary means, to the fullest extent practicable, and to provide assistance and guidance to recipients to help them comply voluntarily. TVA may use the services of appropriate Federal, State, local, or private organizations for this purpose. TVA also has the responsibility to enforce the Act when a recipient fails to eliminate violations of the Act.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.11 What specific responsibilities do TVA and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* TVA shall:

(1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a subrecipient, the recipient must notify the subrecipient of its obligations under the Act. The notice may be made a part of the contract under which financial assistance is provided by TVA.

(2) Provide technical assistance to recipients, where necessary, to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

(b) [Reserved]

§ 1309.12 What are a recipient's responsibilities on compliance reports and access to information?

(a) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient passes through financial assistance from TVA to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(b) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person, and such agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(c) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries,